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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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08/811,772 03/07/97 MCKENZIE

M MCK-1

EXAMINER

PM31/0721

DEFERRED ACTION

JAMES AND FRANKLIN
60 EAST 42ND STREET
SUITE 1217
NEW YORK NY 10165

ART UNIT	PAPER NUMBER
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3623

DATE MAILED:

07/21/98

on May 18, 1997 have been approved by the examiner.
This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

Claim Rejections - 35 U.S.C. § 112

OFFICE ACTION SUMMARY

Claim 8 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing

☒ Responsive to communication(s) filed on 5/18/98
☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim Rejections - 35 U.S.C. § 102

☒ Claim(s) 2-15 is/are pending in the application.
Of the above, claim(s) 2-15 is/are withdrawn from consideration.
☐ Claim(s) 2-15 is/are allowed.
☒ Claim(s) 2-15 is/are rejected.
☐ Claim(s) 2-15 is/are objected to.
☐ Claim(s) 2-15 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on 5/18/98 is/are objected to by the Examiner.
☒ The proposed drawing correction, filed on 5/18/98 is/are approved. ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.
☐ received in Application No. (Series Code/Serial Number) _____
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
☐ Interview Summary, PTO-413
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

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DETAILED ACTION

Drawings

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on May 18, 1997 have been approved by the examiner.

Claim Rejections - 35 USC § 112

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claim 8, "said retaining means" does not have antecedent basis in the claims. Note that all other occurrences of "retaining means" have been changed to "accidental dislodgement minimizing means".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-4, 6-11 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Zizinia. Zizinia discloses a holder for garment hangers and other articles comprising first and second support rods (d) extending in a plane from spaced points on a base (e) that is secured to a wall, door or other support by the screw (d2) and dislodgement means (the upward curved portions of a rod bent end section, see Figures 3 and 4).

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior arts are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zizinia. Zizinia teaches a holder for garment hangers and other articles comprising first and second support rods (d) with an upward curved portion rods bent end section on both sides of the frame that connected to a base (e), see Figures 3 and 4. It would have been obvious to one of ordinary skill in the art to provide a duplication of a bent rod in view of Zizinia and place it at the middle of the frame in order to further provide accidental dislodgement minimizing means for the holder.

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zizinia as applied to claims 2-4, 6-11 and 15 above, and further in view of Lee. Lee teaches the use of a cover for the hanger, the cover for hanger having a triangle space with a slot (20) to accommodate a hook of a hanger. See Figures 1 and 2. It would have been obvious to one of ordinary skill in the art to provide a cover as taught by Lee to the holder of Zizinia so as to provide a protective enclosure.

Response to Arguments

Applicants' arguments filed on May 22, 1998 have been fully considered but they are not deemed to be persuasive.

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Contrary to applicants' allegation on page 4, Zizinia clearly shows the provision of dislodgement minimization means. Specifically, note the upwardly curved section clearly shown in Figure 3.

Further, it should be noted that the claims are drawn to a holder, alone, and not a holder in combination with hangers. It is well established that it is the patentability of the product that is to be determined and not how it is intended to be used. In this regard, it should be noted that the claims are of such breadth that they "read on" the device of Zizinia. The mere recitation of it being intended to be "adapted" to be used for hangers fails to serve as a distinguishing feature because Zizinia is inherently capable of accomodating hangers thereon. Should the applicant continue to disagree, then the specific structure of the device defined by the claims and not possessed by Zizinia accomplishing this function should be pointed out. Alternatively, the applicant should point out what structure of Zizinia precludes it from being inherently capable of accomodating a hanger.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Friday from 8:00 A.M. to 5:00 P.M. The fax phone number for this Group is (703) 305-3598 or 305-3597.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Khoa Tran

July 05, 1998

A handwritten signature in black ink that reads "Daniel P. Stodola". The signature is written in a cursive style with a large, looped initial 'D'.

Daniel P. Stodola
Supervisory Patent Examiner
Group 3600